

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13668 OF 2017

Ranjana Madhusudhan Malpani

....*Petitioner*

V/s.

1. The State of Maharashtra & Ors.

....*Respondents*

Mr. Sarang S. Aradhye, a/w. Ms. Gauri Velankar and Mr. Shantanu Gurav
and Ms. Shruti Kothavade, for the Petitioner.

Mr. O.A. Chandurkar, Additional Government Pleader a/w. Mr. B.B.
Dahiphale, AGP for Respondent Nos.1 to 4-State.

Mr. Priyal Sarda a/w. Ms. Seema Dighe and Mr. Shubham Sane a/w. Mr.
Rajesh Ranglani, for Respondent No.5(c).

CORAM : SANDEEP V. MARNE, J.

Date : 7 January 2025.

P.C. :

1) The petition challenges order dated 5 July 2017 passed by the Minister for Co-operation, Textile and Marketing allowing Revision Application No.4/2015 preferred by Respondent No.5 and setting aside the order dated 30 October 2014 passed by the Divisional Joint Registrar, as well as order dated 15 January 2014 passed by the Deputy Registrar, Co-operative Societies, Solapur.

2) I have heard Mr. Aradhye, the learned counsel appearing for the Petitioner and Mr. Sarda, the learned counsel appearing for

Respondent No.5 and Mr. Chandurkar, the learned Additional Government Pleader for Respondent Nos.1 to 4.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petitioner claims herself to be the adopted daughter of late Shrivallabh Balkisan Attal and further claims that late Shrivallabh Balkisan Attal had executed a nomination in her favour in the records of the Society in respect of Block No.28 owned by him. She accordingly claims that shares in respect of Block No.28 in Mahesh Co-operative Housing Society Ltd, Solapur ought to have been transferred by the Society in her name. She got aggrieved by the action of the Society in transferring the shares relating to Block No.28 in favour of Respondent No.5 and accordingly filed proceedings before the Deputy Registrar, Co-operative Societies, Solapur.

4) The Deputy Registrar was persuaded to accept the claim of the Petitioner essentially on account of the fact that the transfer of shares in the name of Respondent No.5 took place during the lifetime of late Shrivallabh Balkisan Attal. The Deputy Registrar noted that the transfer of shares in favour of Respondent No.5 took place on the strength of letter dated 10 September 2012 of late Shrivallabh Balkisan Attal tendering resignation from the membership of the Society and on the basis of application preferred by Respondent No.5 on the same day i.e. 15 September 2012 for securing membership of the Society. The application preferred by Respondent No.5 on 10 September 2012 was apparently approved by the Managing Committee in meeting held on

15 September 2012 and after payment of transfer fees, entrance fees etc. the shares were transferred in the name of Respondent No.5 by the Society on 25 September 2012. A day later i.e. on 26 September 2012, late Shrivallabh Balkisan Attal passed away. The Deputy Registrar held that mandatory provision of prior notice of 15 days as required under the provisions of Section 24(1)(b) of the Maharashtra Co-operative Societies Act, 1960 (**M.C.S. Act**) was not followed before the admission of Respondent No.5 as member of the Society. The Deputy Registrar further held that since the transfer of shares was effected during the lifetime of late Shrivallabh Balkisan Attal, some underlying document of transfer of Block No.28 was necessary to be executed which was apparently not executed. On these broad grounds, the Deputy Registrar allowed the application filed by the Petitioner and set aside the action of the Society transferring the shares in the name of Respondent No.5. However, the Deputy Registrar did not issue further directions for transfer of the shares of the Society in favour of the Petitioner possibly because the Petitioner did not rely upon any document showing nomination in her favour executed by late Shrivallabh Balkisan Attal. The order of the Deputy Registrar was confirmed by the Divisional Joint Registrar by dismissing Appeal preferred by Respondent No.5 vide order dated 30 October 2014.

5) The learned Minister has however upset the concurrent orders passed by the Deputy Registrar and Divisional Joint Registrar by impugned order dated 5 July 2017 essentially by taking into consideration the fact that the Petitioner was unable to produce any supporting documents to show any semblance of right in her favour to

succeed to the shares in respect of Block No.28. The learned Minister also took into consideration the fact that the Petitioner has filed Regular Civil Suit No.418/2013 challenging notarised Will executed by late Shrivallabh Balkisan Attal on 8 April 2009 allegedly bequeathing Block No.28 in favour of Respondent No.5.

6) On perusal of findings recorded by the Deputy Registrar, Divisional Joint Registrar and the learned Minister in their respective orders, there appears to be some irregularities in the action of the Society in transferring the shares relating to Block No.28 in favour of Respondent No.5. The shares of the Society are essentially related to Block No.28 and cannot be held by any person who does not own any flat/block in the Society. Therefore, for securing membership to the Society, it was essential that Respondent No.5 owned a flat/block in the building of the society. It appears that during his lifetime, late Shrivallabh Balkisan Attal did not execute any registered document in favour of Respondent No.5 transferring Block No.28 in his name. In that view of the matter, the Society could not have acted upon the resignation letter dated 10 September 2012 of the original owner or letter dated 10 September 2012 submitted by Respondent No.5 for admitting him as member of the society. The very transaction of mere resignation of original member and admission of new member in absence of any document of ownership of Block No.28, is clearly erroneous. Therefore, strictly it is not even necessary to go into the aspect of following mandatory provision of 15 days prior notice under the provisions of Section 24(1)(b) of the M.C.S. Act.

7) In ordinary circumstances, this Court would have interfered in the order passed by the learned Minister. However, it is noted that the Petitioner herself has not produced even a single document to prove any semblance of right to succeed to Block No.28. Her oral assertion of execution of nomination in her favour by late Shrivallabh Balkisan Attal is not supported by any documentary evidence. Copy of such nomination is not placed alongwith the petition. There is documentary evidence to establish Petitioner's assertion that she is the adoptive daughter of late Shrivallabh Balkisan Attal. As against this, there appears to be a Will executed in favour of Respondent No.5 by late Shrivallabh Balkisan Attal on 8 April 2009 and in addition to the transfer of shares effected by the Society, Respondent No.5 also relies upon said Will for claiming ownership, as well as membership of the Society. Therefore, even if the action of the Society in accepting resignation of the original owner and admission of Respondent No.5 as new member in absence of any underlying document of transfer of Block No.28 is accepted as correct, the same would not preclude Respondent No.5 from claiming membership of the Society on the strength of Will dated 8 April 2009 executed in his favour. Petitioner has challenged said Will by filing Regular Civil Suit No.418/2013 in the Court of Civil Suit Junior Division, Solapur and according to Mr. Aradhye, the said suit is still pending. Therefore, who exactly is entitled to succeed to the ownership of Block No.28 would ultimately be decided in the said suit. Till decision of the said suit, Respondent No.5 can be permitted to retain membership of the Society. The petition is pending since the year 2017 and was not moved even once during the last 8 long years. During the last 8 long years,

Respondent No.5 is enjoying membership of the Society. By now, it is well settled position of law that mere transfer of shares by nomination or otherwise, does not create any right of ownership in respect of the flat/block in question. Admission of membership ultimately is subject to the decree that would be passed by the Civil Court. In that view of the matter, I am not inclined to interfere in the impugned order passed by the learned Minister. The right of Petitioner and Respondent No.5 with regard to membership of the Society would ultimately depend upon decision of the suit instituted by the Petitioner. The Writ Petition is thus devoid of merits, and it is accordingly **dismissed**.

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[SANDEEP V. MARNE, J.]